

SUPER LAW GROUP, LLC

April 7, 2017

Via Certified Mail, Return Receipt Requested

Seville Central Mix Corp.
101 Johnson Rd.
Lawrence, NY 11559

Peter Scalamandre and Sons Inc.
157 Albany Ave.
Freeport, NY 11520-4710

Seament Transportation, LLC
157 Albany Ave.
Freeport, NY 11520-4710

Peter Scalamandre
157 Albany Ave.
Freeport, NY 11520-4710

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

I write on behalf of Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper)¹ ("Baykeeper") to notify you of Baykeeper's intent to file suit against Seville Central Mix Corp., Peter Scalamandre and Sons, Inc., Seament Transportation, LLC, and Peter Scalamandre (collectively "Seville") pursuant to Section 505(a) of the federal Clean Water Act ("CWA").²

Baykeeper intends to file suit, as an organization and on behalf of adversely affected members, in the United States District Court for the Eastern District of New York seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this letter.³

¹ Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper), is a non-profit public interest 501(c)(3) corporation, whose mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson-Raritan Estuary through enforcement, field work and community action. Baykeeper has approximately 350 members in the New York and New Jersey region, many of whom use and enjoy New York Harbor and Jamaica Bay, which are polluted by industrial stormwater runoff discharged by facilities in New York City and Nassau County that are or should be covered by the General Permit.

² 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.

³ See 40 C.F.R. § 135.2(a)(3)(c) (notice of intent to file suit is deemed to have been served on the postmark date).

Baykeeper intends to take legal action because Seville is discharging polluted stormwater from its ready mix concrete plant ("the Facility"), located at 101 Johnson Road, to the waters of the United States without a permit. This is a violation of Sections 301(a) and 402(p)(2)(B) of the Clean Water Act.⁴ Further, Seville has not applied for coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System ("NPDES") permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("General Permit")⁵ issued by the New York State Department of Environmental Conservation ("DEC"), in violation of Sections 402(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

The street address of the Facility is provided in government records and online resources as 101 Johnson Road. For clarity, the Facility location can be uniquely identified by Nassau County's designation: Section 40, Block A, Lot 1176. The waters of the United States that are polluted by Seville's Facility are Jamaica Bay, and its tributary Head of Bay.

I.

BACKGROUND

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into New York Harbor, Long Island Sound, and other receiving waters. The consensus among agencies and water quality specialists is that stormwater⁶ pollution accounts for more than half of the total pollution entering the marine environment each year.

DEC has designated more than 7,000 river miles, 319,000 acres of larger waterbodies, 940 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as "impaired," or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.⁷ For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges flow from the Facility introduce a host of industrial pollutants into Jamaica Bay. The Clean Water Act provides a regulatory regime for mitigating the worst impacts

⁴ 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

⁵ New York State Department of Environmental Conservation, *SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity*, Permit No. GP-0-12-001, (hereinafter "General Permit"), available at <http://www.dec.ny.gov/chemical/9009.html>. This General Permit replaces earlier general permits for the discharge of stormwater associated with industrial activity. It became effective on October 1, 2012, and will expire on September 30, 2017.

⁶ Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. See 40 C.F.R. § 122.26(b)(13).

⁷ See EPA, Watershed Assessment, Tracking and Environmental Results, New York Assessment Data for 2012, http://ofmpub.epa.gov/waters10/attains_state.report_control?p_state=NY&p_cycle=2012&p_report_type=A (last visited Oct. 14, 2014).

of industrial stormwater pollution, but Seville's Johnson Road site is not in compliance with the basic requirements of that regime.

II.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS

A. Sevilles is Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.⁸ Seville's industrial activity at the Facility has caused and continues to cause a "discharge of pollutants" within the meaning of Section 502(12) of the CWA⁹ and a "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facility on at least each and every day that there has been a rain event of more than 0.1 inches.¹⁰ The Facility has exposed and continues to expose industrial pollutants to stormwater, at a minimum, (a) by receiving, storing, processing, cutting and transporting concrete, sand, aggregate, stone, Portland cement and other materials outside or otherwise exposing them to the elements, and (b) from vehicles entering and leaving the Facility that track pollutants off site. During precipitation events (including runoff from rainfall and snow or ice melt events), pollutants are carried away from the Facility in stormwater discharges.

Seville's activities at the Facility include but are not limited to the purchase, collection, processing, cutting, and outdoor storage, of sand, aggregate, stone, Portland cement, and other substances used in manufacturing, loading, and delivering ready mix concrete. Upon information and belief, the Facility houses a ready mix concrete plant, truck washing equipment, and materials piles that are all potential sources of industrial pollutants. Seville mixes raw materials into concrete on site, transfer the concrete to trucks, wash out trucks at the Facility, and store a variety of finished concrete products, other building materials, and open containers on site, exposed to stormwater.

In carrying out these activities at the Facility, Seville stores and handles materials in a manner that exposes them to precipitation and snowmelt. In particular, raw materials piles, machinery, and trucks that have completed their deliveries can release pollutants onto the Facility property including aggregate, sand, Portland cement, cement additives, waste materials reused in concrete manufacture and other minerals such as shale, clay, limestone, slate, slag, pumice, fly ash, baghouse settled dust, oil and grease. If specialty concretes or cast/formed products are demanded by a customer, the Facility may also house form release agents, latex

⁸ See CWA §§ 301(a), 402.

⁹ 33 U.S.C. § 1362(12).

¹⁰ EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(1)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

sealants, and bitumastic coatings. All of these wastes can release solids that suspend or dissolve in stormwater, lead, iron, zinc, oil and grease, oxygen-demanding and pH-altering pollutants into Jamaica Bay via Head of Bay.¹¹

In addition, machinery on the site may release fuel, oil, lubricants, PCBs, PAHs, an array of metals, pH-affecting substances and chemical residue. These toxic pollutants can be generated in forms ranging from spilled liquid to small particulate matter, which settles on the ground and other surfaces that are exposed to stormwater and non-stormwater flows. Also, vehicles at the Facility may expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids.

Because Seville fails to adequately shelter and otherwise contain these materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates.

Polluted stormwater discharges flow from the Facility, both directly and through nearby MS4 drains, into Head of Bay and Jamaica Bay, both of which are “water[s] of the United States,” as defined in 40 C.F.R. § 122.2 and, therefore, a “navigable water” as defined in Section 502(7) of the CWA. Seville does not have a NPDES permit for these discharges of pollutants. Thus, Seville is discharging polluted industrial stormwater without the permit required under Sections 301 and 402 of the CWA.

B. Seville Is Violating the Clean Water Act by Failing to Apply for NPDES Permit Coverage.

Seville is engaged in the business of providing ready mix concrete and, therefore, is an industrial discharger with a primary Standard Industrial Classification (“SIC”) Code of 3273.¹² Pursuant to Section 402(p) of the CWA and regulations promulgated by EPA pursuant to the CWA, Seville must apply for coverage under the General Permit or an individual NPDES permit for Seville’s discharge of polluted stormwater. In addition, Seville must apply for an individual NPDES permit if the Facility is discharging process wastewater, or has any other non-stormwater discharge containing pollutants that is not authorized by the General Permit (for example, truck washwater is a non-stormwater discharge that is not eligible for coverage under the General Permit). By failing to apply for coverage under the General Permit or an individual permit, Seville is violating CWA Sections 301(a) and 402(a) and (p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).¹³

¹¹ See EPA, “Industrial Stormwater Fact Sheet Series, Sector E: Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities,” available at http://water.epa.gov/polwaste/npdes/stormwater/upload/sector_e_glass.pdf (last visited Sept. 15, 2014).

¹² Baykeeper also believes Seville’s industrial activities include stone cutting, which falls under SIC Code 3281. SIC Code 3281 is included in Sector E of the General Permit issued by DEC and therefore subject to the same requirements as ready mix concrete facilities operating under SIC Code 3273.

¹³ Sections 301(a) and 402(a) and (p) make it unlawful for Seville to discharge stormwater associated with industrial activity without obtaining a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and (e)(1) require Seville to apply for a NPDES permit that covers its discharge of stormwater associated with industrial activity.

To be eligible to discharge under the General Permit, Seville must submit to DEC a registration form called a "Notice of Intent."¹⁴ Notice of Intent forms are available online from DEC.¹⁵ To register, Seville is required, among other things, to list all stormwater discharges, including descriptions of the industrial activities taking place in the drainage area of each discharge and the acreage of industrial activity exposed to stormwater, the separate storm sewer system or immediate surface water body or wetland to which site runoff discharges, and the name of the watershed and nearest waterbody to which the site ultimately discharges and information about whether the receiving waters are impaired.¹⁶ Seville has failed to prepare and file a Notice of Intent or an application for an individual permit.¹⁷

C. Seville Is Violating the Clean Water Act by Failing to Comply with the General Permit.

As a discharger of stormwater associated with industrial activity, Seville must comply at all times with the requirements of the General Permit (or an individual permit).¹⁸ By discharging stormwater associated with industrial activity without complying with the General Permit, Seville is violating CWA Sections 301(a) and 402(a) and (p).¹⁹ The main General Permit requirements that Seville has failed and continue to fail to meet are explained further below.

1. Seville has failed to develop and implement a Stormwater Pollution Prevention Plan.

Before submitting a registration form, Seville must prepare, make available, and implement a Stormwater Pollution Prevention Plan ("SWPPP") in accordance with schedules established in the General Permit.²⁰ The SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity. Further, the SWPPP must describe and ensure the implementation of practices that minimize the discharge of

¹⁴ See General Permit, Part I.E.3. In notifying Seville that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a Notice of Intent to DEC is required in order to obtain coverage under the General Permit, Baykeeper does not concede that all of the activities conducted at the Facility are necessarily eligible for coverage under that permit. For example, if the Facility is discharging process wastewater, such as wash water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also violates CWA §§ 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are provided in Part I.C of the permit.

¹⁵ See http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf.

¹⁶ See Division of Water, NY DEC, *Notice of Intent For Stormwater Discharges Associated with Industrial Activity under the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit GP-0-12-001 (MSGP)* (2012), available at: http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf.

¹⁷ A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database and DEC's records reveals that no Notice of Intent has been submitted for the Facility.

¹⁸ This section discusses the compliance requirements of the General Permit. If Seville elects to seek coverage under an individual NPDES permit instead, the conditions of that individual permit will be at least as strict as those of the General Permit, thus Seville will still be required to comply with all of the following.

¹⁹ Sections 301(a) and 402(a) and (p) make it unlawful for Seville to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a NPDES permit.

²⁰ See General Permit Part III.B.

pollutants in these discharges and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.²¹

Among other things, the SWPPP must include: a general site description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures and best management practices, and schedules and procedures for implementation of control measures, monitoring and inspections.²²

Seville has failed to develop and implement a legally compliant SWPPP, as required by Part III of the General Permit.²³

2. Seville has failed to implement control measures and Best Management Practices that are selected to meet best available technology standards.

Seville cannot legally discharge stormwater under the General Permit until it implements mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the Facility.²⁴ The selected measures must reduce the discharge of pollution from the Facility to the extent practicable through use of the best available technology for the industry.

The General Permit requires that “[t]he owner or operator must select, design, install, and implement control measures (including best management practices),” in accordance with good engineering practices, to meet the effluent limits contained in the permit.²⁵ The General Permit’s effluent limits include both numeric limits specific to certain sectors,²⁶ as well as non-numeric technology-based effluent limits that apply to all facilities.²⁷ These non-numeric technology-based restrictions include minimizing the exposure of pollutants to stormwater²⁸ and minimizing the discharge of pollutants in stormwater²⁹ “to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.”³⁰

²¹ See General Permit Part III.A.

²² See General Permit Part III.C.

²³ On information and belief, no SWPPP exists. If a SWPPP exists, then it is either facially inadequate or has not been fully and adequately implemented.

²⁴ See General Permit Part I.B.1, see also Part VII (setting forth sector-specific control measures and practices).

²⁵ General Permit Part I.B.1.a; see also Part III.C.7 (“The SWPPP must document the location and type of BMPs installed and implemented at the facility to achieve the non-numeric effluent limits in Part I.B.1.a.(2) and where applicable in Part VIII, and the sector specific numeric effluent limitations in Part VIII.”).

²⁶ See General Permit, Part VIII.

²⁷ See General Permit, Part I.B.1.a.2.

²⁸ See General Permit, Part I.B.1.a.2.a.

²⁹ See General Permit, Part I.B.1.a.2.f.

³⁰ See General Permit, Part I.B.1 (“In the technology-based limits included below and in Part VIII, the term ‘minimize’ means reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.”).

Seville has not minimized the discharge of pollution to the extent achievable by implementing control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice, as required by Parts I.B.1 and VIII of the General Permit.

3. Seville has failed to conduct routine site inspections and comply with monitoring, recordkeeping, and reporting requirements.

Seville must conduct an annual comprehensive site inspection and evaluation of areas where industrial materials or activities are exposed to precipitation or where spills and leaks have occurred within the past three years.³¹ The inspection must ensure that all stormwater discharges are adequately controlled and that all BMPs are functioning as expected.³² Records of this inspection must be kept for five years.³³

In addition, qualified facility personnel must carry out routine inspections at least quarterly.³⁴ During these inspections, personnel must evaluate conditions and maintenance needs of stormwater management devices, detect leaks and ensure the good condition of containers, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and document any deficiencies in the implementation and/or adequacy of the SWPPP.³⁵ Such deficiencies must then be addressed through corrective actions.

The General Permit requires that all covered facilities conduct multiple types of analytical monitoring, and DEC may require additional individualized monitoring as well.³⁶ In particular, all facilities authorized under the General Permit must:

- collect and analyze stormwater samples for each outfall at least annually;³⁷
- conduct visual monitoring of stormwater discharges at least quarterly;³⁸
- perform an annual dry weather inspection to detect non-stormwater discharges;³⁹
- inspect, sample and monitor discharges from coal pile runoff;⁴⁰
- inspect, sample and monitor discharges from secondary containment structures and transfer areas;⁴¹

³¹ See General Permit, Part IV.A.1

³² See General Permit, Part IV.A.1

³³ See General Permit, Part IV.A.2

³⁴ See General Permit, Part III.C.7.b.2.

³⁵ See General Permit, Part III.C.7.b.1 and b.3.

³⁶ See General Permit, Part IV.B.3.

³⁷ See General Permit, Part IV.B.1.c.

³⁸ See General Permit, Part IV.B.1.a.

³⁹ See General Permit, Part IV.B.1.b.

⁴⁰ See General Permit, Part IV.B.1.d.

⁴¹ See General Permit, Part IV.B.1.f.

- document storm events during which any samples are taken;⁴²
- document all of these monitoring activities;⁴³
- keep records of the monitoring with the Facility's SWPPP;⁴⁴ and
- submit an annual report to DEC accompanied by a Discharge Monitoring Report detailing the results of any required stormwater samples, as well as reports that documents any instance of non-compliance with benchmarks or numeric effluent limitations.⁴⁵

Because Seville is engaged in industrial activities associated with ready mix concrete production, it is required to sample for:⁴⁶

- Total suspended solids
- pH
- Total Recoverable Iron

Baykeeper is not necessarily aware of all industrial activities taking place at the Facility. To the extent that industrial activities other than the above are carried out at the Facility, other sampling may be required as well.⁴⁷ This notice provides Seville with sufficient information to identify the applicable standards and limitations.

Seville has failed to conduct the required annual and other routine inspections, monitoring, and testing, as required by Parts III, IV, and VIII of the General Permit. Seville also has failed to retain records and submit monitoring reports to DEC, as required by Parts IV and VIII of the General Permit.

4. Seville has failed to comply with additional requirements located in Part VIII of the General Permit.

As noted above, the General Permit contains various requirements specific to ready mix concrete and stone cutting facilities. These requirements, some of which are referenced above, are collected in Part VIII of the General Permit. They include:⁴⁸

- A requirement to include in your SWPPP and annual reports to DEC a description of measures that ensure that process wastewater that results from washing of trucks, mixers,

⁴² See General Permit, Part IV.B.2.c.

⁴³ See, e.g., General Permit, Parts IV.B.1.a.8, IV.B.1.b.4, IV.B.1.c.9, *see generally* Part IV.E.

⁴⁴ See General Permit, Part IV.E.

⁴⁵ See General Permit, Part IV.B.1 and 2 and Part IV.C.

⁴⁶ See General Permit, Part VIII, Sector E.

⁴⁷ See General Permit, Part VIII.

⁴⁸ See General Permit, Part VIII, Sector E.

transport buckets, forms or other equipment are discharged in accordance with a separate SPDES permit or are recycled.

- A requirement to identify in your SWPPP the locations of the following, if applicable:
 - Bag house or other dust control device;
 - Recycle/sedimentation pond, clarifier or other device used for the treatment of process wastewater and the areas that drain to the treatment device.
- A requirement that your site inspections shall take place while the Facility is in operation and shall include all of the following areas that are exposed to stormwater:
 - Material handling areas
 - Aboveground storage tanks
 - Hoppers or silos,
 - Dust collection/containment systems
 - Truck wash down/equipment cleaning areas
- A requirement to sweep the Facility weekly to prevent or minimize the discharge of cement and aggregate.
- A requirement to, if practicable, store cement and any other fine granular solids in enclosed silos or hoppers, buildings, or under other covering.

Seville has failed to comply with the additional requirements of Part VIII of the General Permit.

In sum, Seville's discharge of stormwater associated with industrial activities without a permit, its failure to apply for permit coverage, and its failure to comply with the above-listed conditions of the General Permit (or an individual NPDES permit) constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act.

III.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

The entities referred to collectively in this letter as Seville are the persons, as defined by Section 502(5) of the CWA, responsible for the violations alleged in this Notice. On information and belief, Seville has operated the Facility for at least five years, and currently advertises, by means of a sign on the premises and through a website (<http://scalamandreconstruction.com>), as the operator of the Facility (the website identifies Seville Central Mix Corp as the business located at the Facility). Seville has operational control over the day-to-day industrial activities at this Facility. Therefore, Seville is responsible for managing stormwater at the Facility in compliance with the CWA. Baykeeper hereby puts Seville on notice that if Baykeeper subsequently identifies additional persons as also being responsible for the violations set forth above,

Baykeeper intends to include those persons in this action.

IV.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the Facility located at 101 Johnson Road (Section 40, Block A, Lot 1176 Nassau County). The failure to develop and implement pollution prevention plans and take the other required measures are violations occurring at the Facility in general and in the inadequate documents themselves.⁴⁹

V.

DATES OF VIOLATION

The requirement to obtain permit coverage for the discharge of stormwater associated with industrial activity came into effect at least five years ago. Therefore, every day upon which Seville has failed to apply for permit coverage for the past five years is a separate violation of Sections 301(a), 402(p)(3)(A) and (p)(4)(A) of the CWA and EPA's regulations implementing the CWA.

Additionally, Seville has discharged pollution without a permit in violation of Section 301(a) of the CWA on every day in the last five years on which there has been a measurable precipitation event or discharge of previously accumulated precipitation (i.e., snowmelt) over 0.1 inches.

Finally, if Seville seeks permit coverage after receiving this letter but fails to fully comply with the requirements of the General Permit (or an individual permit), each day upon which Seville claims coverage under a NPDES permit but fail to comply with that permit will constitute a separate day of violation with respect to each unmet condition of that permit.

Seville is liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA evidenced by information that becomes available to Baykeeper after the date of this Notice of Intent to File Suit.⁵⁰ These

⁴⁹ The federal courts have held that a reasonably specific indication of the area where violations occurred, such as the name of the facility, is sufficient and that more precise locations need not be included in the notice. *See, e.g., Natural Resources Defense Council v. Southwest Marine, Inc.*, 945 F. Supp. 1330, 1333 (S.D. Cal. 1996), *aff'd* 236 F.3d 985, 996 (9th Cir. 2000); *City of New York v. Anglebrook Ltd. Partnership*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995); *Assateague Coastkeeper v. Alan & Kristin Hudson Farm*, 727 F. Supp. 2d 433, 439 (D. Md. 2010); *United Anglers v. Kaiser Sand & Gravel Co.*, No. C 95-2066 CW, 1995 U.S. Dist. LEXIS 22449 at *4 (N.D. Cal. Sept. 27, 1995)

⁵⁰ *See Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir. 1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four

violations are ongoing, and barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue.

VI.

RELIEF REQUESTED

Baykeeper will ask the court to order Seville to comply with the Clean Water Act, to pay penalties, and to pay Seville costs and legal fees.

First, Baykeeper will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d) and such other relief as permitted by law. Baykeeper will seek an order from the Court requiring Seville to obtain NPDES permit coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Second, pursuant to Section 309(d) of the CWA,⁵¹ each separate violation of the CWA subjects Seville to a penalty not to exceed \$37,500 per day for each violation that occurred prior to November 2, 2015, and up to \$52,414 per day for each violation that occurred after November 2, 2015.⁵² Baykeeper will seek the full penalties allowed by law.

Third and lastly, pursuant to Section 505(d) of the CWA, Baykeeper will seek recovery of its litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

VII.

PERSONS GIVING NOTICE

The full name, address, and telephone number of the persons giving notice are as follows:

Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper).
52 West Front Street
Keyport, NJ 07735
(732) 888-9870
Attn.: Debbie Mans, Executive Director

VIII.

violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.”).

⁵¹ 33 U.S.C. § 1319(d); *see also* 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

⁵² 40 C.F.R. §§ 19.2 and .4.

IDENTIFICATION OF COUNSEL

Baykeeper is represented by legal counsel in this matter. The name, address, and telephone number of Baykeeper's attorneys are:

Edan Rotenberg, Esq.
Nicholas W. Tapert, Esq.
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, New York 10038
(212) 242-2355

IX.

CONCLUSION

The foregoing provides more than sufficient information to permit Seville to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.⁵³

If Seville has developed a SWPPP, Baykeeper requests that Seville send a copy to the undersigned attorney.⁵⁴ Otherwise, Baykeeper encourages Seville to begin developing a SWPPP immediately after receiving this letter and ask that Seville please inform the undersigned attorney of its efforts so that Baykeeper can work with Seville to avoid disputes over the contents of the SWPPP.⁵⁵

During the sixty-day notice period, Baykeeper is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If Seville wishes to pursue such discussions, please contact the undersigned attorney immediately so that

⁵³ 40 C.F.R. § 135.3(a).

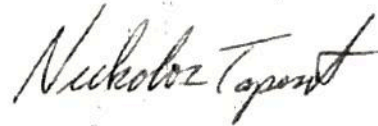
⁵⁴ Note that under Part III.D.2 of the General Permit, the owner or operator of a facility "must make a copy of the SWPPP available to the public within 14 days of receipt of a written request."

⁵⁵ Baykeeper will not send a new notice letter in response to any effort Seville makes to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are "not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of [a defendant's] post-notice compliance efforts." *WaterKeepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 920 (9th Cir. 2004). *See also Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) ("subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant's later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b)."); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995) (plaintiff's notice letter based on inadequacies of defendant's original SWPPP held sufficient to establish court's jurisdiction, even though defendant later prepared a revised SWPPP).

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negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Very truly yours,



Nicholas W. Tapert, Esq.
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, New York 10038
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cc:

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